

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MALIK ALI MUHAMMAD,

Petitioner,

v.

DERRAL ADAMS, Warden,

Respondent.

No. C 07-3627 MMC (PR)

ORDER TO SHOW CAUSE

On July 13, 2007, petitioner, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

In 2003, in the Superior Court of Alameda County, petitioner was found guilty of stalking and making criminal threats. He was placed on probation. In 2004, his probation was revoked and he was sentenced to a term of thirty-two months in state prison. The California Court of Appeal affirmed, and the California Supreme Court denied the petition for review. Thereafter, petitioner challenged his conviction and sentence by habeas petitions filed in the San Mateo County Superior Court, the California Court of Appeal, and the Supreme Court of California. All of the petitions were denied.

DISCUSSION

This Court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody

1 in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a);
2 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall “award the writ or issue an
3 order directing the respondent to show cause why the writ should not be granted, unless it
4 appears from the application that the applicant or person detained is not entitled thereto.”
5 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
6 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
7 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
8 431 U.S. 63, 75-76 (1977)).

9 Petitioner claims: (1) the trial court’s order prohibiting petitioner, who was proceeding
10 in propria persona, from contacting the complaining witness’s employer violated petitioner’s
11 right to due process and his Sixth Amendment right to a fair trial; (2) the trial court’s refusal
12 to allow petitioner to have access to funds that would enable petitioner to seek and obtain
13 expert witness testimony violated petitioner’s right to due process and his Sixth Amendment
14 right to a fair trial; (3) the revocation of petitioner’s probation violated numerous
15 constitutional provisions; and (4) petitioner received ineffective assistance of appellate
16 counsel. Liberally construed, petitioner’s claims are cognizable.

17 CONCLUSION

18 For the reasons stated above, the Court orders as follows:

19 1. The Clerk of the Court shall serve by certified mail a copy of this order and the
20 petition, along with all attachments thereto, upon respondent and respondent’s attorney, the
21 Attorney General for the State of California. The Clerk shall also serve a copy of this order
22 on petitioner.

23 2. Respondent shall file with the Court and serve on petitioner, within 90 days of the
24 date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing
25 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based
26 on petitioner’s cognizable claims. Respondent shall file with the answer and serve on
27 petitioner a copy of all portions of the state trial record that have been transcribed previously
28 and that are relevant to a determination of the issues presented by the petition.

1 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with
2 the Court and serving it on respondent within 30 days of the date the answer is filed.

3 3. In lieu of an answer, respondent may file, within 90 days of the date this order is
4 filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee
5 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
6 motion, petitioner shall file with the Court and serve on respondent an opposition or
7 statement of non-opposition within 30 days of the date the motion is filed, and respondent
8 shall file with the Court and serve on petitioner a reply within 15 days of the date any
9 opposition is filed.


10 4. Petitioner is reminded that all communications with the Court must be served on
11 respondent by mailing a true copy of the document to respondent's counsel.

12 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
13 Court and respondent informed of any change of address and must comply with the Court's
14 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
15 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

16 6. Upon a showing of good cause, requests for a reasonable extension of time will be
17 granted as long as they are filed on or before the deadline they seek to extend.

18 IT IS SO ORDERED.

19 DATED: October 23, 2007

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21 MAXINE M. CHESNEY
22 United States District Judge
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